IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9652 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAJID ALIAS RAKHAI HANIF JAMALSHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. District Magistrate, Panchmahals, passed an order on August 19, 1999 in exercise of powers under Section 3(2) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-detenue under the provisions of the PASA Act.

#. The detaining authority took into consideration 15 offences registered against the detenue with different police stations. The authority also considered the statements of three anonymous witnesses whose identity is not disclosed by the detaining authority by recording satisfaction about the genuineness of the fear expressed by these witnesses qua the petitioner. The detaining authority considered the possibility of resorting to less drastic remedy and came to conclusion that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal anti-social activities as a dangerous person.

#. The detenue preferred an application through jail, which has been treated by this Court as a petition. Since the petitioner was represented by a lawyer Mr. D.M. Thakkar came to be appointed by way of a legal aid advocate.

#. Ms. Pahwa appeared today on behalf of Mr. Thakkar. It is contended by her that the subjective satisfaction recorded by the detaining authority while exercising powers under section 9(2) of the PASA Act is improper and that has affected the right of the detenue of making an effective representation. She has drawn attention of this Court to the grounds of detention wherein, it has been averred by the detaining authority that it has taken into consideration the statements of three anonymous witnesses which were verified by Dy.S.P. and Sub-Divisional Magistrate, Godhra and the detaining authority has agreed with those verification and ultimately, recorded subjective satisfaction about the genuineness of the fear expressed by the witnesses. Ms. Pahwa submitted that the verification done by the Dy.S.P. or Sub-Divisional Magistrate was not at the behest of the detaining authority. The detaining authority has considered the statements which were verified by these two officers and has extended the agreement with the verification. There is nothing to indicate that the detaining authority had personally verified the statements and therefore, the subjective satisfaction recorded by the detaining authority for the need to exercise powers under section 9(2) of the PASA Act is improper and therefore, the order of detention may be quashed.

#. Mr. K.T. Dave, learned AGP has opposed this petition. According to him, the detaining authority has relied upon the verification made by the Dy.S.P. and Sub-Divisional Magistrate and thereafter has recorded subjective satisfaction and therefore, it cannot be said

that it is improper exercise of powers.

#. Having regard to the rival side contentions, the undisputed facts that emerge are that the statements of three anonymous witnesses have not been personally verified by the detaining authority. There is nothing to indicate that the verification of these statements by Dy.S.P.. and Sub-Divisional Magistrate, Godhra were at the instance of the detaining authority. There does not appear to be any report made by either Dy.S.P. or Sub-Divisional Magistrate to the detaining authority about their observation on genuineness of fear expressed by the witnesses. If the verifications are seen, there seems to be reiteration of the main statement recorded by the sponsoring authority in slightly different language. As such, there appears to be no material for the detaining authority to record subjective satisfaction about the genuineness of the fear expressed by the witnesses and therefore, in the absence of any such genuine subjective satisfaction about the genuineness of exercise of powers under section 9(2) of claiming privilege of not disclosing the identity of the witnesses can be said to have affected the right of the detenue of making an effective representation and therefore, the order of detention would stand vitiated. The petition therefore deserves to be allowed.

#. The petition is allowed. The impugned order of detention passed by the District Magistrate, Panchmahals on August 19, 1999 is hereby quashed and set aside. The detenue - Sajid alias Rakhai Hanif Jamal Shaikh is ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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